

## 48A C.J.S. Judges § 288

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### C. Grounds for Disqualification

##### 2. Interest and Relationship

###### a. Interest

###### (3) Particular Interests

### § 288. Probate matters

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#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

**A judge directly interested in a decedent's estate ordinarily cannot act in matters affecting the estate.**

Ordinarily, a judge may not act as such in the matter of a decedent's estate where the judge is interested in such estate.<sup>1</sup> Generally, a judge who is interested in a decedent's estate is disqualified to act in relation to such estate under the general provisions disqualifying on the ground of interest.<sup>2</sup> However, in order that such a judge may be disqualified, following the general rules, the interest must be direct and not merely remote or contingent,<sup>3</sup> and there are instances of seeming interest

which will not serve to disqualify a judge.<sup>4</sup> Mere custodial interests usually do not serve to disqualify a judge.<sup>5</sup>

A will drawn by a probate judge cannot be probated before the judge.<sup>6</sup> Under some statutes, a probate judge is disqualified from acting on an application for probate of a will where the judge is a subscribing witness or is necessarily examined or to be examined as a witness.<sup>7</sup>

### ***Debtor.***

Where the probate judge is a debtor of an estate, the judge is sometimes disqualified to act in respect thereof.<sup>8</sup> However, a judge is not disqualified from acting in a probate proceeding by the fact that the judge is a debtor of the estate where the debt is for a sum certain, and the judge's participation does not result in an increase or diminution of the obligation or defer or mitigate the burden of payment.<sup>9</sup>

### ***Creditor.***

A judge of probate who is a creditor of the estate but who is not a party is not necessarily disqualified from acting in matters of the administration of the estate.<sup>10</sup> The judge is not disqualified to act in matters not bearing directly on, or involving a determination in respect of, the claim.<sup>11</sup>

### ***Surety.***

A surety on a bond who subsequently becomes judge of the court in which are pending the proceedings during which the bond was given is disqualified to act in such proceedings<sup>12</sup> or in any matter or proceeding in which liability on such bond may be involved.<sup>13</sup> However, the fact of having been surety on the bond of a temporary administrator will not disqualify the judge to act on the accounts and doings of the same person who became regular administrator.<sup>14</sup>

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### Footnotes

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Mass.—*In re Aldrich*, 110 Mass. 189, 1872 WL 8905 (1872).

**Real estate purchase from estate**

The canons of judicial conduct requiring a judge to disqualify him- or herself in a proceeding pending in the judge's court in which the judge's impartiality might reasonably be questioned provided sufficient notice to the judge that participation in a real estate purchase from an estate in probate would bring into question the judge's impartiality in approving the final account of an executor of that estate.

Conn.—*Patterson v. Council on Probate Judicial Conduct*, 215 Conn. 553, 577 A.2d 701 (1990).

Ind.—*State ex rel. Leisure v. Superior Court of Madison County*, 236 Ind. 18, 138 N.E.2d 142 (1956).

Cal.—*Cohn v. Superior Court in and for Kern County*, 13 Cal. App. 2d 565, 57 P.2d 186 (4th Dist. 1936).

Ind.—*State ex rel. Anderson-Madison County Hospital Development Corp. v. Superior Court of Madison County*, 245 Ind. 371, 199 N.E.2d 88 (1964).

Ala.—*Ellis v. Smith*, 42 Ala. 349, 1868 WL 555 (1868).

N.Y.—*In re Bingham*, 127 N.Y. 296, 27 N.E. 1055 (1891).

N.Y.—*In re Hancock's Will*, 91 N.Y. 284, 1883 WL 12519 (1883).

Wis.—*Richter v. Leiby's Estate*, 107 Wis. 404, 83 N.W. 694 (1900).

N.H.—*Moses v. Julian*, 45 N.H. 52, 1863 WL 3294 (1863).

N.Y.—*In re Carter's Will*, 193 A.D. 356, 184 N.Y.S. 40 (3d Dep't 1920).

Ind.—*State ex rel. Parker v. Vosloh*, 222 Ind. 518, 54 N.E.2d 650 (1944).

U.S.—*Brock v. Barnsdall Oil Co*, 314 U.S. 643, 62 S. Ct. 83, 86 L. Ed. 516 (1941).

Tex.—*Dial v. Martin*, 37 S.W.2d 166 (Tex. Civ. App. Amarillo 1931), writ granted, (July 22, 1931) and rev'd on other grounds, 57 S.W.2d 75, 89 A.L.R. 571 (Tex. Comm'n App. 1933).

Cal.—*Regents of University of Cal. v. Turner*, 159 Cal. 541, 114 P. 842 (1911).

Ind.—*Metsker v. Whitesell*, 181 Ind. 126, 103 N.E. 1078 (1914).

Ala.—*Wilson v. Wilson*, 36 Ala. 655, 1860 WL 600 (1860).

Ind.—*Metsker v. Whitesell*, 181 Ind. 126, 103 N.E. 1078 (1914).

Tex.—*Halbert v. Martin*, 30 S.W. 388 (Tex. Civ. App. 1895).